IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.98 OF 2007

IN

COURT RECEIVER'S REPORT DATED 10TH JANUARY 2007

IN

ARBITRATION PETITION NO.598 OF 2001

Pramod Kumar Makharia ...Appellant

v/s

Mr Dhruva Kumar Makharia and ors. ...Respondents

Mr Milind Wasudeo i/b M/s Deven Dwarkadas and Partners for Appellant.

Mr Snehal Shah with Mr A.K. Goel for Respondent No.1.

CORAM : D.K. DESHMUKH AND J.H. BHATIA JJ.

DATE : 3RD OCTOBER 2007.

P.C. :-

1. Appeal is not on board. By consent of parties, appeal is taken on board. Heard both the sides.

2. Admitted facts are that by this appeal, the order of the learned Single Judge dated 19th January 2007 is challenged. It is also an admitted position that by that order, the Court Receiver's report dated 10th January 2007 has been granted in terms of the prayer made in that report. By that report, the Court Receiver sought permission of the Court to handover possession of the flat, which was with the Court Receiver, to the person who has been held entitled to the said flat under the consent award. Thus, by the impugned order, the learned Single Judge has directed the Court Receiver, who has already been discharged admittedly, to handover flat to the person who has been held entitled to the flat under the consent award. It is an admitted position that the consent award is signed by the present appellant. It is also an admitted position that according to that consent award, the flat goes to the appellant and the other property which is

the subject matter of the arbitration case to other party. All that the Court has done is it has directed implementation of the consent award. The only submission made on behalf of the appellant is that though it is proved that the properties to which the Court Receiver's report relates could not have been the subject matter of the consent award because there was one more reference to arbitration, but in that reference, Arbitrators were not actually appointed. In our opinion, the submission has no force because all that has been done by the impugned order is that the consent award has been implemented. Admitted position is that the present appellant never challenged the consent award, some other person had challenged the consent award, but that challenge has failed. In our opinion, no fault can be found with the order of the learned Single Judge directing the Court Receiver to handover possession of the properties to the persons who are entitled to these properties under the consent award. There is no substance in the appeal. Therefore, appeal is disposed off. Notice of motion No.862 of 2007 is disposed off.

. Court Receiver and parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.

(D.K. DESHMUKH J.)

(J.H. BHATIA J.)